

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**EDWARD BUTOWSKY, in his personal and
professional capacities,**

Plaintiff,

v.

MICHAEL GOTTLIEB, *et al.*,

Defendants.

Case No. 4:19-cv-00180-ALM-KPJ

ORAL ARGUMENT REQUESTED

**REPLY IN SUPPORT OF MOTION TO DISMISS FOR DEFENDANTS GOTTLIEB,
GOVERNSKI, AND BOIES SCHILLER FLEXNER LLP**

Defendants Michael Gottlieb, Meryl Governski, and Boies Schiller Flexner LLP (“Moving Defendants” or “Mr. Rich’s Counsel”) submit this Reply in support of their motion to dismiss this action pursuant to the first-to-file rule and Rules 12(b)(2), 12(b)(6), 12(b)(7), and 19 of the Federal Rules of Civil Procedure [Dkt. 41] (“Motion to Dismiss”). Because Plaintiff Edward Butowsky has failed to respond by his deadline to do so, Moving Defendants request that the Court consider the Motion to Dismiss unopposed and that it dismiss the claims against them.

A plaintiff’s failure to file a response to a motion to dismiss indicates lack of opposition to such a motion. Local Rule CV-7(d) states that “[a] party’s failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.” *See also Sanchez v. Ocwen Loan Servicing, LLC*, No. 4:16-CV-397, 2016 U.S. Dist. LEXIS 106782, at *4-5 (E.D. Tex. Aug. 12, 2016) (Mazzant, J.) (“Since Plaintiffs have not filed a response, the Court will assume that they are not opposed to the Court’s granting Defendants’ motion to dismiss.”).

Moving Defendants timely filed their Motion to Dismiss on June 21, 2019. The ECF system confirmed that the document was filed at 6:33 p.m. and served on Plaintiff’s counsel. (*See* Exs. A & B to Decl. of Paul J. Skiermont). Therefore, pursuant to L.R. CV-5(a)(3)(C), L.R. CV-7(d), and FRCP 6(a)(1)(C), Plaintiff was required to file any response no later than July 8, 2019. He failed to do so. As of the filing of this Reply, Plaintiff has still failed to file any response. Therefore, the Court should conclude that Plaintiff cannot controvert the facts set out in the Motion to Dismiss and does not oppose the motion, and it should immediately order dismissal.

For the forgoing reasons, and for the reasons set forth in their Motion to Dismiss, Moving Defendants respectfully request that the Court promptly dismiss this lawsuit as to them.

Dated: July 9, 2019

/s/ Christopher M. Hodge

SKIERMONT DERBY LLP
Paul J. Skiermont (TX Bar No. 24033073)
Christopher M. Hodge (TX Bar No. 24074423)
1601 Elm Street, Suite 4400
Dallas, TX 75201
Tel: (214) 978-6600
Fax: (214) 978-6601
pskiermont@skiermontderby.com
chodge@skiermontderby.com

*Attorneys for Defendants Michael Gottlieb, Meryl
Governski, and Boies Schiller Flexner LLP*

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2019, a true and correct copy of the foregoing document was served on all parties of record via the Court's ECF filing system.

/s/ Christopher M. Hodge